

LABOUR DEPARTMENT

The 14th September, 1981

No. 9(1)81-6Lab./10299.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s. Haryana Roadways, Gurgaon.

IN THE COURT OF SHRI HARI SINGH
KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA,
FARIDABAD.

Reference No. 466 of 1980

between

SHRI KASHMIRI LAL, WORKMAN
AND RESPONDENT MANAGEMENT
OF M/S HARYANA ROADWAYS,
GURGAON.

Present—

Shri S. K. Goswami, for the workman.

Shri K. L. Piplani, for the management.

AWARD

This reference No. 466 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN/43-80/52369, dated 8th October, 1980 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Kashmiri Lal, workman and the respondent management of M/s Haryana Roadways, Gurgaon. The term of the reference was:—

Whether the termination of services of Shri Kashmiri Lal was justified and in order? If not, to what relief is he entitled?

After receiving this reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties the following issues were framed:—

- (i) Whether the termination of services of the workman is proper justified and in order? If not, to what relief is he entitled?
- (ii) Relief?

The case of the petitioner is that he was appointed as Conductor and remained as such continuously without any break for more than 3 years and his services were terminated without any reason simply that the department no more requires his services. 100 in number were appointed on ad hoc basis after his appointment and they are still in service. He was removed,—vide order dated 5th July, 1978. The respondent management has appointed more number of conductors after his termination and junior conductors have been retained in service while his service has been terminated. He had got confirmation by operation of law. In his claim statement para No. 3 the workman has stated that he appeared before the Subordinate Service Selection Board, Haryana and Board authorities had told the claimant that his services have been regularised. He further stated in his claim statement in para No. 5 that respondent management treated him as regular and confirmed employee and given all the rights, privileges and benefits of a permanent employee. No notice was given to the petitioner for his termination of service. It is against the law of natural justice and constitution.

The respondent management admits that the petitioner was appointed on 23rd March, 1975 and terminated 5th July, 1978 by a simple order. In their written statement the management denied all the allegations of the petitioner and stated in it that the petitioner was on ad hoc basis a temporary employee. He was absent from duty on 3rd July, 1978 and the duty inspector reported the matter to the General Manager that the workman was to go to Chandigarh with bus at 19-20 on 3rd July, 1978, but he willfully absented himself and loss to the State as well as dislocation of work and inconvenience to the public and that he is habitual absentee. On that the General Manager by taking the lenient view discharged the workman as terms of appointment order dated 22nd March, 1975. Further stated that the action of workman amounted to an act of indiscipline and could invite a serious penalty in case department action was taken. The General Manager has also looked the petitioner's past record in

which he had been punished 14 times before this. My findings on issue No. 1 is as under:—

ISSUE NO. 1.

The management in this case produced as many as 45 documents and three witnesses to prove their case. The management tried to prove workman's past wrong acts and the actions taken by the management on those action. They have produced Ex. M-1 a list of persons sponsored by the Employment Exchange, dated 22nd March, 1975. Ex. M-2 a termination order of the workman, dated 5th July, 1978, Ex. M-3 a report of duty inspector against the workman dated 3rd July, 1978, Ex. M-4 to M-17 letters issued by the General Manager, Roadways for the action taken against the workman for stopping the increments of the workman, Ex. M-18 to 31 show cause notices issued by the management to the workman on the default of his work, Ex. M-32 to 45 replies of the workman in answer to the show-cause notices and closed their evidence.

On the other hand, the workman produced Ex. W-1 the leave application of the applicant dated 3rd July, 1978, which is duly sanctioned at mark 'A' and gave his own statement as WW-1 and closed his evidence.

In this case I have to see only whether the termination order by the management is in order and the management's action is justified for termination of the workman. The workman's representative argued the case that the workman was appointed on 23rd March, 1975 and his services were terminated on 5th July, 1978 without giving any reason for notice, charge-sheet or enquiry. The workman was a permanent employee as he has completed 240 days service in the respondent management without any break or absent. According to the Law under section 25(b)(ii), the workman was in continuous service of the management and became permanent employee of the management. The management should have adopted the rules and law prescribed for a permanent employee which the management had failed to do. The management has treated the workman as temporary and

casual employed appointed on ad hoc basis which is against the rules and law of the Industrial Disputes Act, 1947. The management has removed the services of the workman without giving any opportunity under law. He argued that after completing 240 days there is no such thing as ad hoc basis appointment. The management case is that workman was absent from duties on 3rd July, 1978 and on the report of duty incharge which is Ex. M-3 dated 3rd July, 1978, the services of the workman were terminated but according to the Ex. W-1, the workman has applied for leave on 3rd July, 1978, for 65 days from 1st July, 1978, which was recommended by the duty inspector on the same date at mark 'A'. It is strange to note that on the same date he is reporting against the workman and also recommended the workman's leave. The management produced MW-1 a record-keeper who supported the management's case and produced all the documentary evidences in the case. Shri Manohar Lal, Duty Inspector of the respondent management as MW-2 simply stated in his evidence that he was on duties as Duty Inspector and he complaint Ex. M-3 which was sent to the General Manager. He admits in his cross-examination that he has recommended Ex. W-1. Shri Harcharan Singh, Traffic Manager as MW-3 supported the version of the management. The workman in his statement as WW-1 stated that he was on leave from 3rd July, 1978 according to Ex. W-1. The representative of the management agrees that the applicant was continuous on service from 23rd March, 1975 to 5th July, 1978. He admits that the workman has completed 240 days according to the Industrial Disputes Act, 1947 and become a permanent employee but argued that the workman was on ad hoc basis and he cannot go beyond the terms and conditions of his appointment. He further argued that the workman was punished for his wrong acts for 14 times during his tenure of services such a person cannot be retained in service.

In my view, the workman was a permanent employee under Section 25(b) of the Industrial Disputes Act, with continuous service as there is no break in the services of the petitioner during his three

years services. He should be dealt as permanent employee and not as temporary or casual workman. The management should have given the notice, charge-sheet and proper enquiry should have made before removing the workman from the service which is not done in this case and the workman has removed from the services without any notice, charge-sheet, or enquiry. By a simple order of the authority which is not legal and justified. So Issue No. 1 goes in favour of the workman and against the respondent Roadways.

ISSUE NO. 2:

After going through the whole file and hearing the arguments of the parties, I came to the conclusion — that though the workman has acted very wrongly during his tenure of service which is very clear from the Exs. M-1 to M-17 and M-18 to M-31 by which the authority has stopped the increments of the workman. But on these basis termination cannot be justified without taking the proper proceedings under the law. So I hold the termination order is not justified and in order. The workman is entitled for his re-instatement with continuity of service but without back wages in conciliation of his previous history during the service and action taken by the respondent management. So the workman is not entitled any relief or wages during the period of his termination. No order as to costs. This may be read an answer of this reference.

Dated the 26th August, 1981.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

Endorsement No. 2627, dated 31st August, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the abovesaid award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

No. 9(1)81-6Lab/10300.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Bhai Sunder Dass & Sons, Pvt. Ltd., 21/1, Mile Stone, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK,

PRESIDING OFFICER,

**LABOUR COURT, HARYANA,
FARIDABAD**

Reference No. 219 of 1980

between

**SHRI MAN BAHADUR, WORKMAN
AND THE MANAGEMENT OF M/S
BHAJ SUNDAR DASS & SONS CO.,
PVT. LTD., 21/1, MILE STONE,
MATHURA ROAD,
FARIDABAD**

Shri Chaman Lal Oberai, for the workman.

Shri R. C. Sharma for the Management.

AWARD

This reference No. 219 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana.—*vide* his order No. ID/FD/33-69/17500, dated 16th April, 1980 under section 10(1)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shri Man Bahadur, workman and the management of M/s Bhai Sunder Dass & Sons Co., Pvt. Ltd., 21/1 Mile Stone, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Man Bahadur, was justified and in order? If not, to what relief is he entitled?

After receiving this reference, notices were served on the parties and parties filed their pleadings on the date fixed. On the pleadings of the parties the following issues were framed on 10th September, 1980:—

(1) Whether it is a case of voluntarily abandoning the service by

way of resignation by the workman himself. If so, what effect?

OPM.

- (2) Whether the workman has received his full and final payment of settlement. If so, what effect?

OPM.

- (3) Whether the termination of service of the workman is proper, justified and in order? If not, to what relief is he entitled?

After framing the above issues, the respondent-management lead the evidence and produced documentary evidence, Exhibit M-1 resignation of the workman, Exhibit M-2 letter of acceptance of resignation, dated 31st January, 1980, Exhibit M-3 a Chit of the Store Keeper by which he has received the uniform of the concerned watchman, Exhibit M-4, accounts prepared by the management, dated 31st January, 1980, Exhibit M-5 voucher of payment for Rs. 555.65 to the workman, Exhibit M-6 reply of demand notice to the Labour-cum-Conciliation Officer from the management, Exhibit M-7 and M-8 leave applications of the workman and also produced oral witnesses Shri R. Mishra, Time Keeper, as MW-1 and Shri R. D. Prabhakar, Accountant, as MW-2 and Shri Prab Saran Singh as MW-3 and closed its case. The applicant produced himself as witness as WW-1 and closed his case.

The case of the claimant according to his demand notice and claim statement is that he was a permanent employee working as Security Gate Man from June, 1975 at a monthly salary of Rs. 250 per mensem. On 31st January, 1980, the manager of the company called the workman in his office and asked him to sign some papers. The workman signed these papers. But because he was illiterate, he asked about these signatures on the paper on which the manager told him that these papers are required to maintain some record for the coming year. In this way the workman signed the papers in good faith on 1st February, 1980 when the workman came on duty as usual, the manager stopped him to join the duty without any reason or

notice. The workman daily reported the duty on the gate but the management did not allow to join the duty. After a clear refusal, the workman submitted a demand notice on 12th February, 1980. The workman has totally denied about the voluntarily resignation and taken full and final payment from the management. He has claimed his reinstatement with full back wages and continuity of service.

The management has put its case in written statement. The management raised some preliminary objection as the claimant as watchman does not come under the definition of workman, but there is no such issue pressed by the management. Full and final payment taken by the claimant. The claimant has never terminated by the management rather he has resigned himself. The management admits that he was a watchman at a salary of Rs. 26 per mensem from the last five years. The workman resigned on 29th January, 1980 which was accepted on 29th January, 1980 and he took his full and final payment on 31st January, 1980. The respondent admits that the workman is illiterate. The management stated his written statement that there was a big theft in the factory in the month of January, 1980 which can pass through the gate only because the articles were very heavy. The management reported the matter to the police and police made enquiries. The claimant being aware of this report and perhaps feeling guilty conscious submitted his resignation. So it is a case of self abandoning his service and not of termination of service. My findings on issues is as under:—

ISSUE NO. 1:

Issue No. 1 is whether it is a case of voluntarily abandoning the service by way of resignation by the workman himself. If so, what effect. The onus to prove this issue was on the respondent and the management has produced Exhibit M-1, the resignation of the workman, dated 29th January, 1980, which was accepted on the same day by the respondent and it bears the signature of the workman at Mark 'A',

Exhibit M-2 the letter from the respondent, dated 31st January, 1980, accepted the resignation of the workman which also bears the signature of the workman at mark 'B', Exhibit M-3 a chit from the store-keeper who has received the uniform on 31st January, 1980, of the workman and Exhibit M-6 a letter from the respondent-management to the Labour Officer in reply to the demand notice of the workman, dated 12th February, 1980 and another workman, dated 13th February, 1980 whose services were also terminated on the same day. The respondent has produced two witnesses, Shri R. Mishra, Time Keeper as MW-1 and Shri R. D. Parbhakar, Accountant, as MW-2. Shri R. Mishra in his statement stated that Exhibit M-1 was brought to me by the workman and Shri C. M. Uppadhiya and it was signed in my presence and I took the same to the Engineer of the factory then it was taken to the Director. I took the workman to the Accountant who made the payment. The witness has denied the suggestion that the signature on Exhibit M-1 and M-2 were obtained through fraud. MW-2 Shri R. D. Parbhakar stated that he made the payment in the presence of MW-1 and his assistant. MW-3 Shri Prab Saran Singh, Engineer of the respondent company stated only that Exhibit M-1 was brought to me by Shri R. Mishra and I forwarded the same to the Director. In his cross-examination he has stated that there have been many thefts in the factory in the past. It is possible that there might have been a theft in December and January, 1980. The workman came as his own witness to prove his case. He stated in his statement that he was in service of the respondent since 1975 on a salary of Rs. 250 per mensem. This fact has been admitted by the respondent in his written statement. He further stated that his services were terminated by the respondent without any notice or charge-sheet. The management has got signed some papers before termination of his service by saying that they are needed to prepare some record of the new year and he signed in good faith. He received nothing at the time of his termination as stated by him

in his statement as WW-1. The respondent-management has denied allegation and replied that the workman has resigned it himself. According to the respondent the workman resigned on 28th January, 1980,—vide Exhibit M-1 and the same was accepted,—vide Exhibit M-2 on 31st January, 1980, and paid the dues on the same day. A workman working in the concerned Firm since last five years, resigned from the job without any reason and cause creates doubt in the mind. The workman sent a demand notice on 12th February, 1980, for the same to the respondent. If the workman had left the services of his own accord then why he had sent a demand notice so early or if he had resigned as alleged in Exhibit M-1 then why he had not gone to his home as mentioned in the resignation, Exhibit M-1 and stayed here and gave a demand notice at an early opportunity. In his demand notice, dated 12th February, 1980 he has stated the whole story of signature obtained by the respondent. The respondent-management has written a reason in his written statement that there was a big theft in the factory, the matter was reported to the police and the police enquired the matter. The workman resigned due to guilty conscious. If it was the reason of resignation of the workman then the respondent-management has failed to prove this fact on the file. The respondent has not put the police report for the theft and its investigation report on the file. Even the respondent witness, MW-3 does not know about any such theft in the factory which was suggested by the workman representative. The witness is not a small employee of the respondent, he is a engineer of the Company. So this story cannot be believed. There is no other reason with the respondent to say why the workman of five years' standing resigned from the job and again demanded the same job from the respondent after 10 days. The resignation was accepted by the engineer which was sent through MW-1 as special messenger as stated by MW-2 and accepted by MW-3 the engineer. On this point the representative of the workman argued that as the workman was a watchman and working under the supervision of Security Chief of the factory

then the engineer has no authority to accept the resignation of the workman. The resignation should have been accepted by the Security Officer and not by the Engineer who is not the head of the department of the watchman. The argument of the representative of the workman is very reasonable. As the workman was working with the respondent-management since last five years and there was no allegation against him. He was a permanent employee of the respondent-management. The respondent-management removed two persons on the same date including the workman for the same way without putting any enquiry against them and gave no opportunity to them for their allegation if any. There is no allegation on the workman according to the respondent's written statement and witnesses produced. They have taken the resignation of the workman and simplifies the procedure of removal, there was no theft in the respondent factory. The respondent-management should have produced the copy of F.I.R. or any investigation report of the police, which can show the involvement of the workman in that theft. There can be other matter with the management on which they could remove the workman except to get signed the workman in good faith which is stated by the workman in his demand notice, dated 12th February, 1980 and his statement of claim before this Court. In my view, the workman has signed the papers in good faith on the asking of the respondent management and on those papers the respondent got written the resignation and acceptance letters. Exhibit M-3. The management has failed to prove issue No. 1 that the workman has voluntarily abandoned his services as discussed above. So the finding of issue No. 1 is in favour of the workman and against the respondent-management.

ISSUE NO. 2:

Issue No. 2 is whether the workman has received his full and final payment of settlement, if so what effect. To prove this issue the respondent-management has produced Exhibit M-5 and M-4. Exhibit M-4 is a wages statement regarding the

dues of the workmen prepared by MW-2 Shri R. D. Prabhakar. Exhibit M-5 is a voucher for payment of Rs. 550.65 nP. and produced two witnesses R. Mishra who stated in his statement that I took Shri Man Bahadur to the accountant who made the payment. The interesting thing in this case is that MW-1 Shri R. Mishra wrote the resignation as he admitted in his statement and took this resignation to the engineer and then to the Director for the further order then the same witness took Man Bahadur to the Accountant Shri R. D. Prabhakar who is MW-2, got prepared the voucher and payment made. It shows that Shri R. Mishra was directed by the management to do this all. In ordinary routine of the office the matter does not go in this way. For this procedure at least one or two days take its course. In the written statement of the respondent-management in Para No. 4, the respondent-management has admitted that they paid full and final dues on 31st January, 1980 in the same written statement the respondent-management replied that the claimant received his dues on 1st February, 1980. The two dates given by the management in written statement creates doubt in the mind and that goes in favour of the workman. The claimant has denied the payment due to him in his demand notice, dated 12th February, 1980 and his claim statement, dated 18th June, 1980 and his statement as WW-1. According to the claimant he signed the papers on the asking of the manager of company in good faith and these papers also have got signed by the respondent-management at the same time. So as discussed above this issue also goes in favour of the workman and against the respondent-management.

ISSUE NO. 3:

Issue No. 3 is whether the termination of services of the workman is justified and in order, if not what relief is he entitled. After discussing at length the issue No. 1 about voluntarily abandoning his service and the story of the respondent-management of resignation of the workman this issue does not regulate more discussions. The workman as admitted by the respondent-management was working from

the last five years in the factory and he was permanent employee and his services could not be terminated without proper opportunity given to him. The charge-sheet or enquiry must be held by the respondent-management to remove this workman which is not done in the present case. The management has simply alleged that the workman has resigned himself. The workman is a illiterate person as admitted by the respondent-management in their written statement. So the signature of such person can be taken by saying anything. The respondent-management has failed to prove the case. So the removal of the workman was not justified and not in order according to law and rules. So the workman is entitled to his reinstatement with full back wages. No order as to costs. This may be read an answer of this reference.

The 31st August. 1981.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 2635. dated 31st August, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana. Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above-said award may please be acknowledged, within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-6 Lab. 10301.— In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of

M/s. Bhai Sunder Dass and Sons Pvt. Ltd., 21/1, Milestone, Mathura Road, Faridabad:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER. LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 221 of 1980

between

SHRI CHANDER SINGH, WORKMAN AND THE MANAGEMENT OF M/S BHAI SUNDER DASS AND SONS CO. PVT. LTD., 21/1, MILESTONE, MATHURA ROAD, FARIDABAD.

Shri Chaman Lal Obrai for the workman.

Shri R. C. Sharma for the management.

AWARD

This reference No. 221 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. IDFD/33-89/17506, dated 16th April, 1980 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Chander Singh, workman and the management of M/s Bhai Sunder Dass & Sons Co. Pvt. Ltd., 21/1, Milestone, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Chander Singh was justified and in order? If not, to what relief is he entitled?

After receiving this reference, notices were sent to the parties and parties filed their pleadings on the date fixed. On the pleadings of the parties, the following issues were framed on 10th September, 1980:—

- (1) Whether it is a case of voluntarily abandoning the service by way of resignation by the workman himself? If so, to what effect? OPM.
- (2) Whether the workman has received his full and final payment of settlement? If so, to what effect? OPM.
- (3) Whether the termination of service of the workman is proper, justified and in order. If not, to what relief is he entitled?

After framing the above issues, the respondent led the evidence and produced documentary evidence Ex. M-1 resignation of the workman, Ex. M-2 letter of acceptance of resignation dated 29th January, 1980, Ex. M-3 accounts prepared by management dated 30th January, 1980, Ex. M-4 voucher of payment for Rs. 1,652.40 to the workman, Ex. M-5, a Chit of the Store-keeper by

which he has received the uniform of the concerned workman and Ex. M-6 reply of demand notice to the Uabour-cum-Conciliation Officer from the management and also produced oral witnesses. Shri Chinta Mani Uppadhiya, Time-Keeper as MW-1, Shri Prab Saran Singh, Engineer as MW-2, Shri R. Mishra, Time-keeper as MW-3 and Shri R. D. Prabhakar, Accountant as MW-4 and closed its case.

The case of the claimant, according to his demand notice and claim statement is that he was a permanent employee working as Security Gate Man from the last 11 years at a monthly salary of Rs. 250 per month.

On 31st January, 1980, the Manager of the Company called the workman in his office and asked him to sign some papers. The workman signed these papers. But he was illiterate, he asked about these signatures on the paper on which the Manager told him that these papers are required to maintain some record for the coming year. In this way the workman signed the papers in good faith on 1st February, 1980 when the workman came on duty as usual, the manager stopped him to join duty without any reason or notice. The workman daily reported the duty on the gate but the management did not allow to join the duty. After a clear refusal the workman submitted a demand notice on 13th February, 1980. The workman has totally denied about the voluntary resignation and taken full and final payment from the management. He has claimed his reinstatement with full back wages and continuity of service.

The management has put its case in the written statement. The management raised some preliminary objection as the claimant as Watchman does not come under the definition of workman, but there is no such issue pressed by the management. Full and final payment taken by the claimant. The claimant has never terminated by the management rather he has resigned himself. The management admits that he was a Watchman at a salary of Rs. 250 P.M. from the last five years. The workman resigned on 29th January, 1980 which was accepted on 29th January, 1980 and he took his full and final payment on 31st January, 1980. The respondent admits that the workman is illiterate. The management stated in his written statement that there was a big theft in the factory in the month of January, 1980 which can pass through the

gate only because the articles were very heavy. The management reported the matter to the police and police made enquiry. The claimant being aware of this report and perhaps feeling guilty conscious submitted his resignation. So it is a case of self-abandoning his service and not of termination of service. My findings on issues are as under :—

ISSUE NO. 1 :

The onus to prove this issue was on the respondent and the management has produced Ex. M-1, the resignation of the workman dated 29th January, 1980 which was accepted on the same day by the respondent and it bears the signature of the workman at Mark 'A', Ex. M-2 the letter from the respondent dated 29th January, 1980 accepted the resignation of the workman which also bears the signature of the workman at Mark 'B' Ex. M-5, a chit from the Store-keeper who has received the uniform on 31st January, 1980 of the workman and Ex. M-6 a letter from the management to the Labour Officer in reply to the demand notice of the workman dated 13th February, 1980 and another workman dated 12th February, 1980 whose services were also terminated on the same day. The respondent has produced two witnesses Shri R. Mishra, Time-keeper as MW-3 and Shri R. D. Parbhakar, Accountant as MW-4.

Shri R. Mishra in his statement stated that Ex. M-1 was brought to me by the workman and Shri C. M. Uppadhiya and it was signed in my presence and I took the same to the Engineer of the factory then it was taken to the Director. I took the workman to the Accountant who made the payment. The witness has denied the suggestion that the signature on Ex. M-1 and M-2 were obtained through fraud. MW Shri R. D. Parbhakar stated that he made the payment in the presence of MW-1 and his assistant. MW-2 Shri Prab Saran Singh, Engineer of the respondent Company stated only that Ex. M-1 was brought to me by Shri R. Mishra and I forwarded to the same to the Director. In his cross-examination he has stated that there have been many thefts in the factory in the past. It is possible that there might have been a theft in December and January, 1980. The workman came as his own witness to prove his case. He stated in his statement that he was in service of the respondent for the last 11 years on a salary of Rs. 250 P.M. This fact has been admitted

by the respondent in his written statement. He further stated that his services were terminated by the respondent without any notice or charge-sheet. The management has got signed some papers before termination of his service by saying that they are needed to prepare some record of the new year and he signed in good faith. He received nothing at the time of his termination as stated by him in his statement as WW-1. The management has denied allegation and replied that the workman has resigned of himself. According to the respondent the workman resigned on 25th January, 1980,—vide Ex. M-1, and the same was accepted,—vide Ex. M-2 on 29th January, 1980 and paid the dues on 1st February, 1980,—vide Ex. M-4; the date on the document is doubtful. The workman working in the concerned Firm since last eleven years, resign from the job without any reason and cause, creates doubt in the mind. The workman sent a demand notice on 13th February, 1980 for the same to the respondent. If the workman had left the services of his own accord then why he had sent a demand notice so early or if he had resigned as alleged in Ex. M-1 then why he had not gone to his home as mentioned in the resignation Ex. M-1 and stayed here and gave a demand notice at an early opportunity. In his demand notice dated 13th February, 1980 he has stated the whole story of signature obtained by the respondent. The management has written a reason in his written statement that there was a big theft in the factory, the matter was reported to the police and the police enquired the matter. The workman resigned due to guilty conscious. If it was the reason of resignation of the workman then the management has failed to prove this fact on the file. The respondent has not put the police report for the theft and its investigation report on the file. Even the respondent witness MW-2 does not know about any such theft in the factory which was suggested by the workman representative. The witness is not a small employee of the respondent he is Engineer of the Company. So this story can not be believed. There is no other reason with the respondent to say why the workman of eleven years standing resigned from the job and again demanded the same job from the respondent after 10 days. The resignation was accepted by the Engineer which was sent through MW-1 as special messenger as stated by MW-4 and accepted by MW-2 the engineer. On this

point the representative of the workman argued that as the workman was Watchman and working under the Supervision of Security Chief of the factory then the Engineer has no authority to accept the resignation of the workman. The resignation should have been accepted by the Security Officer and not by the Engineer who is not the head of the Department of the Watchman. The argument of the representative of the workman is very reasonable. As the workman was working with the respondent since last eleven years and there was no allegation against him. He was a permanent employee of the management. The management removed two persons on the same date including the workman for the same way without putting any enquiry against them and gave no opportunity to them for their allegation if any. There is no allegation on the workman according to the respondent's written statement and witnesses produced. They have taken the resignation of the workman and simplifies the procedure of removal, there was no theft in the respondent factory. The management should have produced the copy of FIR or any investigation report of the police which can show the involvement of the workman in that theft. There can be other matter with the management on which they could remove the workman except to get signed the workman in good faith which is stated by the workman in his demand notice dated 13th February, 1980 and his statement of claim before this Court. In my view the workman has signed the papers in good faith on the asking of the management and on those papers the respondent got written the resignation and acceptance letters Ex. M-3. The management has failed to prove issue No. 1 that the workman has voluntarily abandoned his service as discussed above. So the finding of Issue No. 1 is in favour of the workman and against the respondent management.

ISSUE NO. 2 :

Issue No. 2 is whether the workman has received his full and final payment of settlement if so, what effect ? To prove this issue the respondent management has produced Ex. M-4 and M-3, Ex. M-3 is a wages statement regarding the dues of the workman prepared by MW- Shri R. D. Parbhakar, Ex. M-4 is a voucher for payment of Rs. 1652.40 and produced two witnesses R. Mishra who stated in his statement that I

took Shri Chander Singh to the accountant who made the payment. The interesting thing in this case is that MW-1 Shri R. Mishra wrote the resignation as he admitted in his statement and took this resignation to the Engineer and then to the Director for the further order then the same witness took Chander Singh to the Accountant, Shri R. D. Prabhakar who is MW-got prepared the voucher and payment made. It shows that Shri R. Mishra was directed by the management to do this all. In ordinary routine of the office of the matter does not go in this way. For this procedure at least one or two days take its course. In the written statement of the respondent management in Para No. 4, the respondent has admitted that they paid full and final dues on 31st January, 1980, in the same written statement the management replied that the claimant received his dues on 1st February, 1980. The two dates given by the management in written statement creates doubt in the mind and that goes in favour of the workman. The claimant has denied the payment due to him in his demand notice dated 13th February, 1980 and his claim statement dated 18th June, 1980 and his statement as WW-1. According to the claimant he signed the papers on the asking of the Manager of Company in good faith and these papers also have got signed by the management at the same time. So as discussed above this issue also goes in favour of the workman and against the respondent-management.

ISSUES NO. 3 :

Issue No. 3 is whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled? After discussing at length the issue No. 1 about voluntarily abandoning his service and the story of the respondent-management of resignation of the workman this issue does not require more discussions. The workman as admitted by the respondent-management was working from the last 11 years in the factory and he was permanent employee and his services could not be terminated without proper opportunity given to him. The charge-sheet or enquiry must be held by the management to remove this workman which is not done in the present case. The management has simply alleged that the workman has resigned himself. The workman is a illiterate person as admitted by the respondent management in their written statement. So the

signature of such person can be taken by saying anything. The management has failed to prove the case. So the removal of the workman was not justified and not in order according to law and rules. So the workman is entitled his reinstatement with full back wages. No order as to costs. This may be read an answer of this reference.

Dated : 31st August, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 2636, dated 31st August, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Govt., Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial disputes Act, 1947, with the request that the receipt of the abovesaid award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-6 Lab. 10303.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Sonapat Cooperative Sugar Mills, Ltd., Sonapat.

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER,
LABOUR COURT
HARYANA ROHTAK

Reference No. 224 of 1979

between

SHRI BALWAN SINGH, WORKMAN
AND THE MANAGEMENT OF M/S.
THE SONEPAT COOPERATIVE SUGAR
MILLS LTD., SONEPAT.

Present:

Shri S. N. Solanki, for the workman.
Shri Vishnu Dutt Sharma, for the
management.

AWARD

This reference has been referred to this court by the Hon'ble Governor.—vide his order No. ID/SPT/131-79/52616, dated

the 12th December, 1979 under section 10(i)(6) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Balwan Singh, workman and the management of M/s. The Sonapat Coop. Sugar Mills, Ltd., Sonapat. The term of the reference was:—

Whether the termination of services of Shri Balwan Singh was justified and in order? If not to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the notices, filed their respective pleadings and the only issue 'as per the term of reference' was framed on the basis of their pleadings. The management examined Shri Sahib Singh Dahiya, Assistant Accountant as their sole witness and closed their case. The workman appeared as his own witness and closed his case.

I heard the learned representative of the parties and have also carefully perused the evidence oral as well as documentary available on the record and decide the issue as under:—

The management has tried to justify their action on the basis of the findings of the enquiry conducted by Shri Ajit Singh their legal assistant into the charges levelled against the workman for the theft of a fan on the night of 19th April, 1979 and also for remaining absent from 20th April, 1979 to 24th April, 1979 where in the workman has been found guilty of the charges thereby resulting in the termination of the services of the workman. The workman has alleged in his notice of demand as well as in his rejoinder that the workman was not allowed the reasonable opportunity of cross examination of management witnesses and for production of his defence. He was neither given the copy of the proceedings nor the copy of the enquiry report and as such the enquiry was vitiated and order passed on the basis of the same was illegal and wrong. The management did not examine the Enquiry Officer who could have proved the justness of the enquiry and whether the workman was provided full opportunity and the same was held in accordance with the principle of natural

justice and the enquiry findings were based on the basis of evidence and were not perverse. The only witness examined by the management could not say anything about the fairness and propriety of the enquiry. In his cross examination the witness has admitted that no presenting officer appeared on behalf of the management before the Enquiry Officer and he also could not say even by consulting the record whether any letter for conduct of enquiry was ever sent to the workman or any such letter was written by the Enquiry Officer. The management has badly failed to justify their action and the same can not be held to be justified on the basis of the enquiry which has not been duly proved. The charges levelled against the workman are also false as the workman has deposed in his statement that he had remained in police custody for investigation purposes from 20th April, 1979 to 24th April, 1979 and when no case was made out against him the police let him off. The charge of the management i.e. he remained absent for this period is therefore false and by a show of enquiry the management has tried to victimise the workman in a malacious manner. Shri Om Parkash reported to the Security Officer the theft of the fan at 1-20 a.m. and it cannot be held that either he committed the theft or it was with his connivance and the management witness also could not deny or admit this fact. Alongwith Shri Om Parkash the workman Shri Balwan Singh, helper/attendant in Engineering department on duty from 12-00 midnight to 8-00 a.m. and Mahavir Singh helper/attendant in Engineering department on duty from 4-00 p.m. to 12-00 midnight who attended the complaints and if no complaint was received they were to sit at main gate near the time office. The management witness has given out in his cross examination in cases of workman Shri Balwan Singh and Shri Mahavir Singh it does not fall in their duties to take guard of the fans but their main duty was to remove the faults on the receipt of complaints. From these circumstances I am fully convinced that the three workmen namely Sarvshri Balwan

Singh, Balwan Singh and Om Parkash were picked in order to get rid of them some how and a false case for theft of the the fan was manipulated.

I am, therefore, constrained to hold that the termination of the workman is neither justified nor in order? The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

The 29th August, 1981

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

Endorsement No. 3213, dated 1st September, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

No. 9(1)81-6Lab./10304.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s. The Sonapat Co-operative Sugar Mills Ltd., Sonapat.

BEFORE SHRI BANWARI LAL DALAL,

PRESIDING OFFICER,

LABOUR COURT

HARYANA, ROHTAK

Reference No. 225 of 1979

between

**SHRI OM PARKASH WORKMAN AND
THE MANAGEMENT OF M/S. THE
SONEPAT CO-OPERATIVE SUGAR
MILLS, LIMITED, SONEPAT.**

Present:

Shri S. N. Solanki, for the workman.

Shri Vishnu Dutt Sharma, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide*

his order No. ID/SPT/129-79/52610, dated the 12th December, 1979 under section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Om Parkash, workman and the management of M/s. The Sonapat Cooperative Sugar Mills Ltd., Sonapat. The term of the reference was:—

Whether the termination of services of Shri Om Parkash was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the notices, filed their respective pleadings and the only issue 'As per the term of reference' was framed on the basis of their pleadings. The management examined Shri Sahib Singh Dahiya Assistant Accountant as their sole witness and closed their case. The workman appeared as his own witness and closed his case.

I heard the learned representatives of the parties and have also carefully perused the evidence oral as well as documentary available on the record and decide the issue as under:—

The management has tried to justify their action on the basis of the findings of the Enquiry conducted by Shri Ajit Singh their legal Assistant into the charges levelled against the workman for the theft of a fan on the night of 19th April, 1979 and also for remaining absent from 20th April, 1979 to 24th April, 1979 where in the workman has been found guilty of the charges thereby resulting in the termination of the services of the workman. The workman has alleged in his notice of demand as well as in his rejoinder that the workman was not allowed the reasonable opportunity of cross examination of management witnesses and for production of his defence. He was neither given the copies of the proceedings nor the copy of the enquiry report and as such the enquiry was vitiated and order passed on the basis of the same was illegal and wrong. The management did not examine the Enquiry Officer who could have proved the justness and fairness of the enquiry and

whether the workman was provided full opportunity and the same was held in accordance with the principle of natural justice and the enquiry findings were based on the basis of evidence and were not perverse. The only witness examined by the management could not say anything about the fairness and propriety of the enquiry. In his cross-examination the witness has admitted that no presenting officer appeared on behalf of the management before the Enquiry Officer and he also could not say even by consulting the record whether any letter for conduct of enquiry was ever sent to the workman or any such letter was written by the Enquiry Officer. The management has badly failed to justify their action and the same cannot be held to be justified on the basis of the enquiry which has not been duly proved. The charges levelled against the workman are also false as the workman has deposed that he had remained in police custody for investigation purposes from 20th April, 1979 to 24th April, 1979 and when no case was made out against him the police let him off. The charge of the management i.e. he remained absent for this period is therefore false and by a show of enquiry the management has tried to victimise the workman in a malicious manner. Shri Om Parkash workman reported to the Security Officer the theft of the fan at 1.20 a.m. and it cannot be held that either he committed the theft or it was with his connivance and the management witness also could not deny or admit this fact. Alongwith Shri Om Parkash two other workmen Sarvshri Balwan Singh, helper/Attendant in Engineering department who was on duty from 12.00 midnight to 8.00 a.m. and Shri Mahavir Singh, helper/attendant in Engineering Department on duty from 4.00 p.m. to 12.00 midnight who attended the complaints and if no complaint was received they were to sit at main gate near the time office. The management witness has given out in his cross-examination in cases of Sarvshri Mahavir and Balwan Singh it does not fall in their duties to take guard of the fans but their main duty was to remove the faults on their receipt

of complaints. From these circumstances I am fully convinced that the three workmen, namely, Sarvshri Om Parkash, Balwan Singh and Mahavir Singh were picked in order to get rid of them somehow and a false case for theft of the fan was manipulated.

I am, therefore, constrained to hold that the termination of the workman is neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

The 29th August, 1981

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

Endorsement No. 3214, dated the 1st September, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

The 29th August, 1981.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

The 20th October, 1981.

No. 9(1) 81-6-Lab.-12253.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Good Year India Ltd., Faridabad.

**SHRI SATISH KUMAR, WORKMAN AND THE
BEFORE SHRI M. C. BHARDWAJ, PRESIDING
OFFICER INDUSTRIAL TRIBUNAL HARYANA,
FARIDABAD.**

Reference No. 448 of 1978

between

**MANAGEMENT OF M/S. GOOD YEAR INDIA
LTD., FARIDABAD**

President.—Shri R. C. Sharma, for the workman,
Shri O. P. Malhotra/Shri Sat Pal, for
the management.

AWARD

By order No. ID/FD/84-78/42947, dated 26th September, 1978, the Governor of Haryana referred the following dispute between the management of M/s Good Year India Ltd., Faridabad and its workman Shri Satish Kumar, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Satish Kumar was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties an issue as per term of reference was put to trial by order dated 12th June, 1979, of my predecessor and the case was fixed for the evidence of the management, who examined Shri Shanker Rath Roy, Leave Clerk of the management as MW-1 and Shri K. L. Khurana, their Manager Labour as MW-2. Then the case was fixed for the evidence of the workman, who examined Shri Kanwar Singh Inspector, S.H.O. Central Police Station, Faridabad, as WW-1, Shri Virender Singh, Head Constable, Central Police Station, Faridabad, as WW-2, Shri V. K. Sachhar, an employee of the management as WW-3, Shri Amar Singh Yadav, Labour-cum-Conciliation Officer as WW-4 and appeared as his own witness as WW-5. Arguments were heard. Now I give my finding on the issue.

Shri O. P. Malhotra, learned representative for the management, referred para 1 of the claim statement and argued that the fact of holding of office of trade union CITU was not proved by the workman, nor he proved victimisation. He argued that the present case did not fall under section 2(OO) of the Industrial Disputes Act because it was a case of continued ill-health, therefore, it did not fall under the term retrenchment. He read out clause XV A of the Certified Standing Orders and argued that the action of the management was justified and squarely fell under the clause. He referred clause 3(29) of General Clauses Act and article 13 of the Constitution of India. He cited 1962 I LLJ page 203, 1964 I, L.L.J. page 358, 1981 Lab. I. C. page 893, 1978 Lab. I.C. page 386 and

1979 II LLJ 194. Regarding evidence of the workman he argued that the workman was son of a D.S.P., therefore, WW-1 and WW-2 had deposed under his influence. He also argued that the workman did not lead discrimination which he had referred in his statement as WW-5. He also referred to the language of some letters of the workman and pointed out that the language was full of indiscipline.

Shri R. C. Sharma, learned representative for the workman, argued that the workman was never sick continuously. He happened to be so only intermittently. He referred to para 5 of the written statement and pointed out that termination was due to continuous illness. He read out clause XIII(D) of the Certified Standing Orders and pointed out that the medical certificates were from Government dispensary while two were from a private Doctor. He pointed out that the workman was discriminated being a CITU, trade union activist. He read out regulation 98 of ESI Act and cited 1978 Lab. I.C. 179, 1976 I LLJ page 478, 1976 Lab.I.C. 1766, 1970 Lab.I.C. 1695, 1981 Lab.I.C. 806, 1981 Lab. I.C. 893, 1978 Lab.I.C. 386 and argued that the case was not covered by the Standing Orders. The action was discriminatory and the workman was earlier charge-sheeted and suspended for which a reference had been pending for trial before this Tribunal. As regards any illegality in modified clause XV A, I find that it is within the powers of the Certifying Officer to modify the Standing Orders on the application of the management or union. Under section 3(2) of the Standing Orders Act the Standing Orders should be in conformity with the Model Standing Orders. In case there was any grievance the aggrieved party has a right to get the same modified.

MW-1 stated that leave statements Ex. M-1 to M-3 were prepared by him from leave register. He stated that according to Ex. M-1 the workman was on sick leave for 52 days and on sick leave not granted for 5 days. In Ex. M-2 he was on 136 days as on sick leave granted and one day sick leave not granted. In Ex. M-3 he was on 55 days as on sick leave granted and one day on sick leave not granted. Ex. M-4 to Ex. M-6 were leave applications and medical certificates submitted by the workman. Ex. M-7 to Ex. M-35 were photo copies of some leave applications of

the workman. Ex. M-36 to M-61 were photo copies of medical certificate/outdoor tickets issued by the Medical Officer. He further stated that photo copy of leave applications filed by the management were not total applications submitted by the workman. These were only specimen applications. In cross-examination he stated that he was in the service of the management factory. Shri Satish Kumar, the concerned workman, was not leader of the union at that time but these days he was the leader. He further stated that he did not know if Shri Satish Kumar was the leader of the union or a member of the CITU or there had been a strike due to him. He did not know anything about the Jhanda union. He did not remember the colour of the Jhanda at the gate of the factory. He further stated that he did not remember at what time he had received information of termination of services of the workman on 26th June, 1978. A workman was marked present in the register after he had finished his work. He could not tell if the workman had worked on 26th or not. He replied that no intimation of rejecting or sanctioning of the application was given to the workman, however, communication of grant of earned leave was given to him. MW-2 stated that he knew the concerned workman who joined service on 1st January, 1975, as a trainee worker, Ex. M-62 was copy of appointment letter. Ex. M-64 was full and final settlement for the training period. Ex. M-16 was letter of regular appointment as a production worker and M-66 letter of confirmation. His services were terminated on 26th June, 1978,—vide letter Ex. M-67. Letter was sent by registered post because the workman refused to receive the same but he accepted personally on 27th June, 1978. He further stated that the services of the workman were terminated under clause XV-A of the Standing Orders Ex. M-72. Copy of conciliation report held on the demand notice of the workman was Ex. M-73. The reason of termination was his continuous serious illness. Letter Ex. M-74 was issued by him. Ex. M-75 was reply of the workman which was in foul and insolent language. He further stated that the services were not terminated on account of victimisation or trade union activities. He further pointed out that persons listed in Ex. M-79 were dismissed but not on account of trade union activities. A settlement copy Ex. M-80 was between the management and workmen but Shri Satish Kumar was not General Secretary at the time of termination. Ex. M-81 to Ex. M-86

were letters from the union giving names of the office-bearers of the union. He pointed out that Ex. M-87 was charge-sheet given to the workman on which he was suspended but later on reinstated,—vide Ex. M-88 because the complainant had withdrawn his complaint. Another charge-sheet was Ex. M-89 on which the workman was awarded 7 days punishment,—vide Ex. M-90. A further charge-sheet was Ex. M-91 which was decided,—vide Ex. M-92. Other charge-sheets issued to the workman were Ex. M-93 and M-94. In cross-examination he stated that a workman was entitled to casual leave for seven days. Privilege leave as per Factories Act and sick leave for seven days during the year. There was no system for long leave without pay, however, such leave depended upon the circumstance. For leave depended upon the circumstance. For genuine *bona fide* reasons leave without pay was sanctioned to the workman. There was no fixed duration for such leave, nor there was any maximum limit for cases of earned leave and sickness. He stated that the services of the concerned workman were terminated on account of habitual ill health. He admitted it as correct that the concerned workman was away from duty on account of illness which was not continued long illness but that was intermittently. He admitted that the concerned workman was not declared by the certifying Surgeon under the Factories Act to be unfit, nor by the Factory Doctor or ESI Surgeon. He admitted that the concerned workman was issued Ex. M-63 on the complaint of his training which was in the division which is for mixing of rubber. He denied the suggestion that police had been called at the time of handing over letter of termination to the workman. He admitted that Ex. W-1 newspaper was published by the company. He denied that no police came to the factory gate. He denied that Shri Satish Kumar was a CITU workman and active trade unionist. He further replied that Ex. M-71 did not bear the signature of the concerned workman. There was no reason mentioned in column 10 but the same was filled in the presence of the concerned workman although no copy was given to him. He denied that it was prepared later on. He further replied that clause XV A of the Standing Orders came into force in February, 1978. He admitted documents Ex. W-2 to W-7 which bear signatures of Shri C. S. Puri. He accepted having received Ex. W-2 at the time of receipt of Ex. W-3. He also accepted having received Ex. W-5 and

Ex. W-6. He admitted that he did not serve notice of termination to the workman personally. The job was entrusted to the Security Officer. The workman had 6½ years of service.

WW-1 stated that in June, 1978 he was S.H.O., Central Police Station, Faridabad. Good-year factory was under his jurisdiction. He had then heard the name of Shri Satish Kumar the concerned workman who was a union leader. He has inclination towards CITU organisation. He had gone to Good Year factory with a force on the date of dismissal of Shri Satish Kumar. In cross examination he stated that he did not know if Shri Satish Kumar was an office holder of the union. By union leader he meant that he was an organiser and the word leader was in the sense of ordinary term. He had seen the workman organising meetings in the factory. By CITU he meant Central India Trade Union of Communist Party. He further replied that he had gone to Good Year factory as he was informed that there was apprehension of labour trouble. On reaching the factory he learnt that Shri Satish Kumar was dismissed. The Security Officer had offered the notice in his presence which the workman did not receive. The Security Officer had sought his help in the delivery of that notice but he had refused to help being not part of his duty. He could not tell if that report was available because at the relevant time Faridabad was in Gurgaon District. He did not remember fully the number of force which he had taken. He denied the suggestion that he was not called by Good Year factory and never went there. WW-2 stated that he had brought daily diary of police station for 26th June, 1978 in which a report number 19 appears that at 3.15 P.M. Head Constable Kewal Singh, Constable Ramesh Chand 302, Constable Subhash 2/52, Jaf Parkash 1054, Ishwar Singh 1233, Rajinder Singh 5/314, Havavir Singh 5/614 were sent to Good Year factory for duty. WW-3 stated that he was office holder of the union from 1972 to 1975 and 1976 to 1979. He had brought union record. Shri Satish Kumar was elected Secretary of the union in 1977 copy of proceeding was Ex. WW-3/1. He had leaning towards CITU whereas the union was affiliated to INTUC. Shri Satish

Kumar had held meetings of CITU at the factory gate. The factory was of an American concern which does not like Communist union. On the date of termination there were about 15-16 constables at the Goodyear factory gain. In cross-examination he admitted that the original of Ex. WW-3/1 was in different hand and ink because the person who wrote the proceeding had asked him to get the safe written by somebody else. Shri Chand Parkash started writing and then it was written by Shri Bhajan Lal. He denied the suggestion that it was written later on. The proceeding was written on 18th November, 1977. He admitted that in the election on 21st January, 1978 Shri Satish Kumar was not elected any office holder of the union. He did not know if Shri Satish Kumar was office holder of the union on 26th June, 1978. He further stated that he was no office holder or member of the Executive Committee. He was turned out of the union being a CITU activist. He denied the suggestion that no CITU meeting was ever held at the factory gate and Shri Kanwar Singh S.H.O. was not present at the factory gate on that date. WW-4 stated that he was posted in 1978 in Ballabgarh circle. Goodyear factory fell under his jurisdiction. He knew Shri Satish Kumar who attended his office for union work. He represented workmen on behalf of CITU. He represented workers of Siracco Auto, Clutch Auto in addition to Good Year workers. He remained in circle Ballabgarh from 15th March, 1976 to December, 1978 and saw the workman working for CITU. In cross-examination he stated that he had not brought any record. WW-5 the concerned workman stated that he joined service on 1st January, 1975. In 1976 he had links with CITU. In the Good Year factory at that time was INTUC union. The company was an American concern and did not like CITU because the same was attached to CPM. He had a number of followers in the factory, therefore, he was elected Office Secretary of the union in September, 1977. He was not liked by the INTUC people, therefore the union body was dissolved and new members were appointed. He further stated that

he used to hold CITU gate meetings which were attended by outside leaders. He used to attend conciliation office. His activities were known to the management. The behaviour of the management was not good towards him and he was harassed. He was transferred from one department to other. He was never on unauthorised absence. He had obtained leave according to Standing Orders. He fell sick and remained at Hansi for 3½ months. Most of the period of his absence he remained at Ballabgarh. He was on duty for 3-4 days prior to his dismissal. On 26th June, 1978 his duty ended at 4.15 P.M. when he was coming to the factory gate he saw a police party there. Security Officer Captain Nigam called him and asked him to receive a letter which he refused saying that he will receive the same in his duty hours the next morning. Shri Nigam then sought the help of Shri Kanwar Singh S.H.O. who declined to force him to accept the letter. He had enquired from the constable as to what was the matter to make them present at the factory gate. They told that a trouble was apprehended due to dismissal of one Shri Satish Kumar CITU leader. On the next morning when he came to duty he received termination letter. He produced documents Ex. W-2 to W-9 and stated that there were some other workers sick. One workman Shri Banga was continuing sick for the last two years. He further stated that his services were terminated for his trade union activities. In cross-examination he stated that he did not remember the date of his termination of service. He did not recollect the days of his absence, nor the reason of each absence but stated that he had mentioned the reason of leave in each application. He denied the suggestion that he was not ill and has mentioned the cause of absence in the application. He also denied the suggestion that during the period of illness shown in the leave applications he was actually engaged in the CITU work. He could not tell as to how much time he devoted each day for CITU work. He denied the suggestion that he had no followers in the Good Year company. He refused to give names of his followers for the fear of their victimisation. He gave names of S/Shri Chand Parkesh, Hari Dev and Udai Vir, who were victimised by the management but he could not give documentary proof of victimisation. He further stated that he belonged to District Bhiwani and his father was posted at DSP, Vigilance, Hissar. He did not

remember the place of posting of his father at the time of his termination. He denied the suggestion that the police was sent by his father. He denied the suggestion that he was President of Good Year Employees Union and Good Year factory staff employees association since 27th August, 1980. He stated that he did not know much about Shri Banga's case the only thing he knew that he was ill.

At the outset I may say that the law of pleadings was not strictly applicable to industrial adjudication but the workman had clearly stated his case in the demand notice. I find that the present reference was made by the Government on demand notice, dated 8th August, 1978 in which the workman challenged his termination being by way of victimisation for legitimate trade union activities and also as colourable *mala fide* exercise of clause XVA of the Standing Orders. He also mentioned in the demand notice that clause XVA was enacted to victimise him as the clause came into force on 20th February, 1978. Last para of the demand notice is as under:—

"Clause XV-A about present form came into force only on 20th February, 1978. Hence action under that clause could not be taken for absence for the period prior to the commencement of the clause XV-A. Standing Orders could not have retrospective effect. Amendment to standing orders could have only prospective effect. It is further to be pointed out that persons, who were absent for more number of days than me have not been proceeded under clause fifteen (a) and hence my termination is a discrimination and a process of victimisation. It is a punishment without giving me an opportunity to defend and hence is illegal as violative of principle of natural justice and the relevant standing orders."

In the claim statement he reiterated his stand and further alleged that termination being on account of victimisation and *mala fide*. It was against regulation 73 and 98 of the ESI Act. He also mentioned that it amounted to retrenchment. The management denied the claim of the workman and stated that the action was *bona fide* under the clause of the Standing Orders and was

not a retrenchment. The concerned workman has shown him General Secretary Good Year Employees Union in his demand notice. The management filed Ex. M-79 list of office bearers and members of the Executive Committee of Good Year Employees Union in which name of Shri Satish Kumar appears at serial number 3 and office of the union against his name is shown as General Secretary. The management has put a note that Shri Satish Kumar, who was elected General Secretary stands dismissed and his case is pending adjudication. As regards his earlier trade union activities MW-1 in his cross-examination had denied him to be a leader at that time but he had shown his ignorance about his CITU union. MW-2 has also denied his trade union activities during the relevant period. Shri Kanwar Singh, Inspector of Police who appeared as WW-1, Shri V. K. Sachhar who was an office holder of the union from 1972 to 1975 and 1976 to 1979 has stated that the concerned workman was Office Secretary of the union in 1977 and had been a CITU activist. This fact is further supported by the statement of Shri Amar Singh Yadav, Labour-cum-Conciliation Officer in his statement as WW-4. In Ex. W-1 appears a photograph of members of Good Year Employees union among whom is Shri Satish Kumar. It is written that Shri Satish Kumar was elected President of the Good Year Employees Association on August 27, 1980. His service in the company is shown from 1975 to 1978. A para from the paper is reproduced below :—

"An avid unionist his involvement in union activities goes back several years. In 1977, he held the post of Union's Office Secretary and was elected General Secretary of the Union in 1978. Though a founder member of the CITU's Faridabad branch, and having worked as its Secretary for 3 years (1976—78), he left the organisation in October, 1978. At present he is Auditor of the Jhuggi-Jhonpuri Mahasabha and is legal adviser to a number of smaller labour unions in the Faridabad industrial area."

The contention of the learned representative for the management that the Inspector of Police had deposed on account of influence of the father of the concerned workman does not find

favour with me because that version is supported by Shri Amar Singh Yadav, Labour-cum-Conciliation Officer Faridabad, who was a gazetted officer and in no way had concern with the police department. The diary entry of 26th June, 1978 of Police Station Control Faridabad is also a reliable document in which movements of police officials and reports are entered. According to the police record was deputed to Good Year Factory on that date. The workman has proved to be an Office Secretary General Secretary and then President of the union which was also clear from the management in its paper. It is also unlikely that a workman could be elected General Secretary of the union after his simple dismissal as the workman admitted to be General Secretary on the date of demand notice, although he was not as such on 26th June, 1978, i.e. the date of termination. It is, therefore, proved beyond doubt that the workman had been an active trade unionist.

The services of the workman were terminated by invoking clause XV-A of the Certified Standing Orders, which is as under:—

"Any permanent employee desirous of leaving employment shall give the Company one month's notice in writing. Similarly where it becomes necessary to terminate the services of a permanent workman due to reasons to be recorded in writing, such reasons being reasons other than misconduct, retrenchment or close down such as his being declared by the Government as a traitor or a person likely to jeopardise the safety of the establishment and subject to the provisions of the Employees State Insurance Act and Workmen's Compensation Act, of a workman who develops defect in the eyesight or hearing or mental deficiency one month's notice in writing shall be given by the management or wages in lieu thereof to the workman concerned. The services of permanent workman may also be terminated by the management by giving one month's notice on the grounds of long and protected or habitual illness, ill health, loss of confidence or any other *bona fide* reasons".

The contention of learned representative for the management is that the action was taken on

the workman being continuous ill health, whereas the learned representative for the workman contended that the workman was not ill continuously. I find from Ex. M-3 an extract of attendance for the year 1978, that the workman in January was present on 11 days, six being weekly off and holidays and four sanctioned leave. In the month of February, he was present for ten days, 4 weekly off and 11 sanctioned leave, in the month of March he was present for 11 days, 4 weekly off, two holidays, 11 sanctioned leave, one casual leave. In the month of April, he was on 23 days sanctioned leave and two days casual leave and did not attend duty on any day. In the month of May, he was present for 18 days and in the month of June, he was present for 13 days, 8 days on sanctioned leave. His services were terminated on 26th June, 1978, 25th was his off day and on 24th he was present. He was also present on the other dates except 6, 10, 17, 19, 20, 21, 22 and 23 in which he is shown to be on sanctioned leave. The point raised by the learned representative for the workman that clause XV-A in its present form was added on 20th February, 1978 to victimise the concerned workman only. He also read regulation number 73 and 98 of ESI Act and argued that standing order clause was in contravention of this Act, therefore, it should be held void. He also laid stress that illness could not be habitual as mentioned in the clause. On this point the contention of the learned representative for the management seems to be correct that Standing Orders are governed by Industrial Employment (Standing Orders) Act, 1946 and for any amendment of a clause action under Industrial Employment (Standing Orders) Act, 1946 was necessary. The workman has produced Ex. W-2 to W-6 to show that there were a number of workmen who had been on sick leave, etc. I find that the absentee list runs into many pages. In Ex. W-3 at serial No. 33 Shri Dharamvir Singh was absent for 150 days, Shri Randhir Singh for 153 days, at serial No. 92 Shri Hem Raj for 112 days, at serial No. 106 Shri Kiran Singh for 147 days during January to June, 1977. Shri R. C. Sharma also pointed out the discrimination against the workman because no action was taken against Shri Gogia who was ill. Shri O. P. Malhotra learned representative for the management pointed out that no action was taken against him because the circumstances were different. I find that the contention of the workman has

been from the very beginning that he was victimised and discriminated for his union activities. The management has proved that he had been on sick leave and other leave for a number of days but I find that at the time of termination the workman was on duty. MW-2 has referred in his statement that the workman was chargesheeted a number of times and punishment of 7 days suspension was also given to him. He had also referred Ex. M-75 stating that the language was foul and insolent. As regards the contention of Shri R. C. Sharma, learned representative for the workman that the action of the management amounted to retrenchment in view of Santosh Gupta V. State Bank of Patiala, 1980 II LLJ., page 72. Section 2(OO) stated as under:—

“retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include :—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of a workman on the ground of continued ill-health.”

In clause ‘C’ above the word “continuous” is significant. The workman was not ill continuously rather he was present even at the time of termination of his service.

On my above observations and contentions of the parties I do not find the present case of simple termination under clause XV-A of the Standing Orders. I think that the management had in mind the trade union activities and earlier chargesheets, particularly the alleged insolent reply of the workman, for the present action which I find as a punishment. I also accept the other contention of the workman that the action also amounted to retrenchment because the workman had more than one year service and compliance of chapter V-A of the Industrial Disputes Act was necessary in view of Santosh Gupta's case. The issue is, therefore, decided against the management.

While answering the reference, I give my award that the termination of services of the workman Shri Satish Kumar was neither justified, nor in order. Shri Satish Kumar is entitled to reinstatement with continuity of service and with full back wages and all other benefits of service. I order accordingly. ,
The 29th September, 1981.

M. C. BHARDWAJ,
Presiding Officer.
Industrial Tribunal Haryana, Faridabad.

Endorsement No. 894 dated 29th September, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal Haryana, Faridabad.

The 9th November, 1981

No. 9(1)81-6Lab/12362.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Jawala Foundry, Village and Post Office Godpuri, tehsil Palwal, district Faridabad :—

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 163 of 1981

between

SHRI RAMJILAL, WORKMAN AND THE MANAGEMENT OF M/S JAWALA FOUNDRY,
VILLAGE AND POST OFFICE GADPURI, TEHSIL PALWAL, DISTRICT FARIDABAD

Present :—

None, for the workman.

None, for the management.

AWARD

By order No. ID/FD/55/81/28004, dated the 4th June, 1981, the Governor of Haryana referred the following dispute between the management of M/s Jawala Foundry, Village and Post Office Gadpuri, tehsil Palwal, district Faridabad and its workman Shri Ramji Lal, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Ramji Lal was justified and in order ? If so, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The representative for the workman appeared and the management did not appear because service was not effected on them, hence notice was again sent to the management. On 8th February, 1981, neither the workman appeared nor his representative. The management was also not present and, the case was ordered to be dismissed for non-prosecution by the parties. I, therefore, dismiss the case for non-prosecution by the parties.

Dated the 28th September, 1981.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 893, dated the 29th September, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.